



Brian J. Stiger
Director

**COUNTY OF LOS ANGELES
DEPARTMENT OF
CONSUMER AND BUSINESS AFFAIRS**

"To Enrich Lives Through Effective and Caring Service"

Members of the Board

Hilda L. Solis
Mark Ridley-Thomas
Sheila Kuehl
Don Knabe
Michael D. Antonovich

September 13, 2016

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

23 September 13, 2016

LORI GLASGOW
EXECUTIVE OFFICER

**DEPARTMENT OF CONSUMER AND BUSINESS AFFAIRS
RECOMMENDATION TO APPROVE AGREEMENT BETWEEN CITY OF SANTA MONICA AND
COUNTY FOR COUNTY ENFORCEMENT OF SANTA MONICA'S MINIMUM WAGE ORDINANCE
(ALL SUPERVISORIAL DISTRICTS – 3 VOTES)**

SUBJECT

The Los Angeles County (County) Department of Consumer and Business Affairs (DCBA) seeks approval of a Services Agreement for Minimum Wage Enforcement (Agreement) with the City of Santa Monica (City) for the performance of minimum wage, paid sick leave and hotel worker ordinance enforcement.

IT IS RECOMMENDED THAT THE BOARD:

1. Approve and instruct the Chair to sign the attached Agreement with the City to provide the services of the DCBA Wage Enforcement Program (WEP) to perform wage enforcement related services for the City, effective immediately, for one calendar year from the date the Agreement takes effect. The annual cost of services will be billed on an hourly basis at a rate of \$90.00 per hour and will be fully funded by the City.
2. Delegate authority to the Director of DCBA, or designee, to renew this Agreement for up to two optional one-year renewals by written notice, after County Counsel and Chief Executive Officer (CEO) approval, and instruct the Director of DCBA to notify your Board and the CEO in writing within ten (10) working days that a renewal option has been exercised.
3. Delegate authority to the Director of DCBA, or designee, to execute amendments to the Agreement to increase or decrease service levels, and thereby increase or decrease annual costs;

modify the annual billing rates, as determined by the Auditor-Controller; and make immaterial or clerical changes to the Agreement with the concurrence of County Counsel.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the proposed Agreement will provide the City with services from the County for a regional approach to minimum wage enforcement.

Additionally, on November 17, 2016 the Board of Supervisors (Board) instructed DCBA to collaborate with other local jurisdictions to enforce local laws. This Agreement achieves the Board's objective by ensuring a uniform and collaborative enforcement program across the region.

Implementation of Strategic Plan Goals

This request supports the strategic plan as follows:

Goal No. 1: Operational Effectiveness/Fiscal Sustainability: Maximize the effectiveness of processes, structure, operations, and strong fiscal management to support timely delivery of customer-oriented and efficient public services.

Goal No. 2: Community Support and Responsiveness: Enrich lives of County residents by providing enhanced services, and effectively planning and responding to economic, social, and environmental challenges.

This contract enables DCBA to provide quality and responsive services to County residents with a high level of efficiency and customer service to those in need of wage enforcement services.

FISCAL IMPACT/FINANCING

There is no net County cost to this Agreement at this time. The Agreement permits the City to have an independent audit conducted of DCBA's performance in enforcing the City's ordinance and allows the City to recoup the cost of the audit, up to \$20,000, but only in the event the audit finds, according to professional auditing standards, DCBA engaged in substantial and material misconduct in its enforcement performance. The City shall pay DCBA for services according to the appropriate and prevailing billing rates as determined by the Auditor-Controller and DCBA for FY 2016-17. The City is aware that rates will change at the beginning of every fiscal year hereafter as determined by Auditor-Controller.

Based on current projections, the City will offset the annual cost for services in the amount of \$120,000 for one Consumer Affairs Representative III Investigator for FY 2016-17.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On September 15, 2015, your Board adopted an ordinance establishing the County's minimum wage for work performed in the unincorporated areas of the County. The City of Santa Monica adopted its minimum wage ordinance on January 26, 2016, applicable to work performed within the City of

Santa Monica. Both the County's and City's local minimum wage ordinances became effective July 1, 2016, increase at the same rate and on the same annual schedule, and both exceed the California State minimum wage.

Your Board also adopted the Los Angeles County Wage Enforcement Ordinance ("Wage Enforcement Ordinance"), thereby designating DCBA as the County department responsible for administration and enforcement of the Los Angeles County Minimum Wage Ordinance. The Wage Enforcement Ordinance provides DCBA with enforcement authority to ensure employees performing work in the unincorporated areas of the County are paid no less than the amount specified in the County's Minimum Wage Ordinance. One purpose your Board articulated in the Wage Enforcement Ordinance is to "allow for partnerships between the County and other local, State, and federal agencies responsible for enforcement of wage and hour laws throughout the County to promote a fair employment environment for all employees and businesses." (County Code, Section 8.101.020 B (4).)

After adoption of the County and City's minimum wage ordinances, the City of Santa Monica approached DCBA to retain it for purposes of enforcement of the Santa Monica Minimum Wage Ordinance. Discussions between the DCBA and the City culminated in this proposed Agreement, under which, if approved by your Board, DCBA investigators will perform enforcement functions within the City of Santa Monica on the City's behalf, including investigations of wage violations, issuing enforcement orders and monitoring employers' compliance. DCBA will also provide information and outreach to Santa Monica workers and businesses in order to educate them as to the requirements they are subject to under the City's ordinance. The County will provide training and consultation to the City related to wage enforcement services and the City will train the County on Santa Monica's ordinance.

The Agreement provides for reciprocal indemnification. The Agreement also permits the City to audit DCBA's performance in enforcing the City's ordinance and allows the City to recoup the cost of the audit, up to \$20,000, if the audit uncovers DCBA engaged in substantial and material misconduct in its enforcement performance. Either party may terminate the Agreement with 90 calendar days advance written notice. The attached Agreement has been approved as to form by County Counsel.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Beginning on July 1, 2016, DCBA began enforcing the County's minimum wage ordinance in the unincorporated areas within the County. This Agreement will have no negative impact on the services provided by the Department.

This Agreement will ultimately reduce the burden on DCBA's WEP by enabling the program to allocate additional staff to its enforcement work. This Agreement will improve the quality of the County's wage enforcement program by taking a regional approach to enforcement with Santa Monica and the County working together.

CONCLUSION

Upon Board approval, it is requested that the Executive Officer – Clerk of the Board return one adopted copy of this letter to the Department of Consumer and Business Affairs as well as five (5)

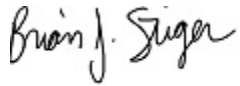
The Honorable Board of Supervisors

9/13/2016

Page 4

signed copies of the Agreement.

Respectfully submitted,

A handwritten signature in cursive script, reading "Brian J. Stiger".

BRIAN J. STIGER

Director

BJS:cmt

c: Chief Executive Officer
County Counsel
Executive Officer, Clerk of the Board

ENFORCEMENT SERVICES AGREEMENT

This Minimum Wage Outreach and Enforcement Services Agreement ("Agreement"), entered into as of September 13, 2016 ("Execution Date"), by and between the City of Santa Monica ("City"), a municipal corporation, and the County of Los Angeles ("County"), a political subdivision of the State of California, is made with reference to the following:

RECITALS

- A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The County is a political subdivision duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the County. County represents that it has the background, knowledge, experience and expertise necessary to provide the services set forth in this Agreement.
- C. The City and County have each adopted local minimum wage ordinances with requirements going beyond those in California State law.
- D. The City and County local minimum wage ordinances share the same wage levels and schedule.
- E. The County Board of Supervisors has designated the Department of Consumer and Business Affairs (DCBA) as administrator and enforcer of the Los Angeles County Minimum Wage Ordinance; has approved staffing and other funding for the DCBA, and has adopted the Los Angeles County Wage Enforcement Ordinance ("Wage Enforcement Ordinance") to ensure that employees performing work in the unincorporated areas of the County are paid no less than the amount owed according to the Los Angeles County Minimum Wage Ordinance.
- F. One stated purpose of the Wage Enforcement Ordinance is to "allow for partnerships between the County and other local, State, and federal agencies responsible for enforcement of wage and hour laws throughout the County to promote a fair employment environment for all employees and businesses." (Section 8.101.020 B (4).)
- G. The City values regional coordination and seeks to provide services to its businesses and employees in a cost-effective and efficient manner.

78527

- H. The County is authorized to enter into this Agreement by the provisions of Section 56-1/2 and 56-3/4 of the Charter of the County.
- I. The City and County now desire to enter into this Agreement for DCBA to provide wage enforcement services to the City.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

TERMS AND CONDITIONS

- 1. **Term.**
 - 1.1 **Initial Term.** This Agreement begins on the Execution Date and terminates on June 30, 2017, unless sooner terminated in accordance with Section 14 or extended by the parties in writing.
 - 1.2 **Options to Extend.** The City has four options, upon the mutual agreement of the City and County, to extend the term of this Agreement on all the same terms and conditions, for additional one-year periods. Each option shall be exercised by modification of this Agreement.
- 2. **County Services.** County agrees to perform all of the services ("Services") described in Exhibit A, Scope of Services. County will complete the Services in accordance with Exhibit B, Budget.
- 3. **City Services.** The City agrees to:
 - 3.1 Make available to County any currently existing documents, data or information required for the performance of the Services.
 - 3.2 Designate a representative authorized to act on behalf of City.
 - 3.3 Promptly examine and render findings on all documents submitted for staff review by County.
 - 3.4 Provide a City representative to represent the City at administrative hearings with County administrative support.
 - 3.5 Meet on a quarterly basis with the County to review active cases, determine investigative priorities, and provide training as-needed on Santa Monica ordinances and procedures.
 - 3.6 Provide the County with space in Santa Monica on an as-needed basis to, among other tasks, conduct interviews, work on active cases, and meet with parties.
- 4. **Compensation.** The City will compensate County for the Services performed, on an hourly fee basis, for a not to exceed amount of \$125,000 for year one, and total not to exceed amount of \$625,000 over the contract term, as set forth in Exhibit B ("Compensation Amount"). The County will invoice the City on a monthly basis for compensation within a reasonable time frame. In the event the City exercises an

option, pursuant to Section 1.2 of this Agreement, to extend the term of the Agreement after year one, the City agrees that, if County employees receive a cost of living adjustment ("COLA") that is effective during an option year, the Compensation Amount shall be increased in an amount equal to the increased cost for the County to provide the Services due to the County's COLA, up to three percent annually, and the effective date of an increase to the Compensation Amount shall be the same effective date as the County's COLA. The County shall be responsible for notifying the City of any such County COLA.

5. **Invoices.** County will invoice the City for the Services in accordance with Exhibit B and the City will pay any undisputed amount within 30 days of receipt. Any controversy or claim arising out of or relating to a disputed invoice shall first be addressed through mediation. The mediator must be chosen upon the mutual agreement of both Parties. Parties must first attempt mediation in good faith before proceeding to civil court.
6. **Notices.** Unless otherwise specified in this Agreement, all notices, demands, requests or approvals to be given under this Agreement, must be in writing and will be deemed served when delivered personally, by email, or on the third business day after deposit in the United States mail, postage prepaid, registered or certified, addressed as follows:

6.1 All notices, demands, requests or approvals to the City:

Finance Department
City of Santa Monica
1717 4th Street Suite 250
Santa Monica, California 90401
Attention: Gigi Decavalles-Hughes and Stephanie Lazicki
Re: Contract No. 10322
(310) 458-2220 extension 2062
stephanie.lazicki@smgov.net

with a copy to:

Santa Monica City Attorney's Office
1685 Main Street, Third Floor
Santa Monica, California 90401
Attention: City Attorney
Re: Contract No. 10322

6.2 All notices, demands, requests or approvals to County:

Los Angeles County Department of Consumer and Business Affairs
500 West Temple Street, Suite B96
Los Angeles, California 90012
Attention: Wendy Myring, Administrative Services Manager
(213) 974-9756
wmyring@dcba.lacounty.gov

7. **Independent Parties.** Both parties to this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers of one another. Neither the City nor its officers or employees will have any control over the conduct of County or any of County's agents, employees, or subcontractors, except as otherwise provided in this Agreement.
8. **Integrated Contract.** This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties. Any preliminary negotiations and agreements of any kind or nature are merged into this Agreement. No oral agreement or implied covenant may be held to vary the provisions of this Agreement. This Agreement may be modified only by written agreement signed by City and County, and approved as to form by the City Attorney.
9. **Insurance.** Prior to commencing work, County must procure, maintain and pay for insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the Services by County or County's agents, representatives, employees or subcontractors for the duration of this Agreement. County must obtain insurance that, at a minimum, meets the requirements for insurance set forth in Exhibit C, Insurance Requirements and Verifications.

County, at its sole option, may satisfy all or any part of this insurance requirement through use of a program of self-insurance (self-funding of its liabilities). A certificate evidencing coverage or a letter evidencing self-funding will be provided to City after execution of this Agreement.

10. **Defense and Indemnification.**

- 10.1 County agrees to defend, indemnify, and hold harmless the City, its agents, officers, boards and commissions, and employees (collectively, "City") from and against any and all liability, claims, demands, damages, or costs, including but not limited to attorney's fees, or payments for injury to any person or property (collectively, "Losses") arising from or connected with the acts, errors and/or omissions of County, or County's employees, agents, officers, and subcontractors (collectively, "County"), arising from or relating to this Agreement.

- 10.2 The City agrees to defend, indemnify, and hold harmless the County from and against any and all liability, claims, demands, damages, or costs, including but not limited to attorney's fees, or payments for injury to any person or property (collectively, "Losses") arising from or connected with the acts, errors and/or omissions of the City, including, but not limited to, acts, errors and/or omissions related to the City's representation and warranty that its minimum wage ordinance and related rules and regulations are duly adopted, legally enforceable, and compliant with all applicable state and federal laws; concerning the City's authority to adopt and enforce its minimum wage ordinance; and the City's authority to confer responsibility for such enforcement to the County as contemplated in this Agreement.
11. **Prohibition Against Transfers.** County may not assign, hypothecate, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any attempt to do so without the City's consent will be null and void, and any assignee, hypothecatee or transferee acquires no right or interest by reason of such attempted assignment, hypothecation or transfer.
12. **Permits and Licenses.** County, at its sole expense, must obtain and maintain during the term of this Agreement all required business and professional permits, licenses and certificates.
13. **Waiver.** A waiver of any breach of this Agreement may not be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition of this Agreement.
14. **Default and Termination.**
- 14.1 The City or County may provide written notice of default if City or County fails or refuses to perform any of the provisions of this Agreement. If the default is not cured within a 90-day period or agreed upon reasonable time after the City's or County's written notice of default, City or County may terminate this Agreement by written notice of termination to City or County. Termination will be effective 5 days after delivery of notice of termination.
- 14.2 The City and County have the option, upon mutual agreement, of terminating this Agreement by giving 90 days' written notice to City or County. Upon termination of this Agreement, City will pay County any compensation earned and unpaid up to the effective date of termination.
- 14.3 In the event of a termination, each party shall fully discharge all obligations owed to the other party accruing prior to the date of such termination, and, except as otherwise provided herein, each party shall be released from all obligations that would otherwise accrue subsequent to the date of termination.

15. Compliance with Law.

The Services provided by County pursuant to this Agreement must comply with all laws of the State of California and the United States, and all ordinances, rules, and regulations enacted or issued by City.

16. Discrimination. County may not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.

17. Nuisance. County may not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

18. Maintenance of Records.

18.1 County must maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by the City for any services provided where compensation is on the basis of hourly rates, subcontractor costs, or other direct costs. County must keep the records, together with supporting documents, separate from other documents and records and maintain them for a period of three years after receipt of final payment.

18.2 County must maintain records in sufficient detail to permit an evaluation of the Services and in accordance with generally accepted accounting principles. County must clearly identify all records and make them readily accessible to the City. At the City's request, County must provide records in an electronic format and, if necessary, access to any proprietary software to view such electronic records.

19. Inspection of Records.

19.1 County must allow the City to have free access to County's books and records and to inspect all work, data, documents, proceedings and activities related to this Agreement. The City has the right to examine or audit County's books and records related to this Agreement, and County agrees to cooperate with any such examination of its books and records. If the City determines any amounts are due and owing to the City and the County agrees on the amount, the County shall forward those undisputed amounts to the City within a reasonable amount of time (not to exceed 90 days) from presentation of the City findings to the County. If the County disputes an amount identified as due and owing, then such disputed amounts shall be subject to the dispute resolution procedure specified in Section 5. Notwithstanding the foregoing, the County shall not be required to provide records or information it may not disclose due to applicable law or contractual obligations limiting or otherwise restricting disclosure, without a court order authorizing such disclosure.

- 19.2 At the City's discretion, the City may retain an independent, third party auditor, subject to prior approval by the County, which approval shall not be unreasonably withheld, and that auditor shall have equal access to the County's books and records related to this Agreement as the City for purposes of conducting an audit of the County's services. If the City's auditor determines any amounts are due and owing to the City, and the County agrees, the County shall forward those amounts to the City within a reasonable amount of time (not to exceed 90 days) from presentation of the City auditor's findings to the County. If the County disputes an amount identified by the City's auditor as due and owing, then such disputed amounts shall be subject to the dispute resolution procedure for invoices specified in Section 5.
- 19.3 In the event that the City's auditor identifies misconduct by the County related to fraud, misrepresentation, or non-performance, that, in the auditor's judgment and according to professional auditing standards, constitutes "substantial and material", the City may recoup the City's auditor's fee for performing the audit from the County, but in no event shall such cost exceed \$20,000 per audit, per year. Under no circumstances shall County's liability for administrative fines owed to the City exceed the amount of administrative fines actually owed by and collected from employers. If the County disputes the auditor's determination, then such dispute shall be subject to the dispute resolution procedure for invoices specified in Section 5.

20. Work Product; Reports.

- 20.1 Any work product prepared or caused to be prepared by County or any subcontractor for this Agreement will be the exclusive property of City. No work product given to or prepared by County or any subcontractor pursuant to this Agreement may be made available to any individual or organization by County without prior written approval by City.
- 20.2 At the City's request, within 30 days County must furnish reports concerning the status of the Services.

21. **Standard of Care.** County agrees to provide all Services, including services performed by any subcontractor, in a manner consistent with the level of care and skill ordinarily exercised by members of County's profession currently practicing in the same locality under similar conditions.

22. Subcontractors.

- 22.1 If County proposes to have any subcontractor perform any part of the Services, County will inform the City in advance, describing the scope of work to be subcontracted, the name of the proposed subcontractor, and the total price or hourly rates used in preparing an estimated cost for the subcontractor's services. For any work that is subcontracted over \$20,000, the County must

first seek City approval of the subcontract and the City, in its sole discretion, may deny the request.

- 22.2 County will be responsible for the quality of any subcontractor's work. Every subcontract or agreement of any kind entered into between County and any subcontractor (or between any subcontractor and others) must contain the following provision:

This agreement is consistent with all terms and conditions of the Enforcement Services Agreement No. _____ (CCS) entered into between the City of Santa Monica and County of Los Angeles on September 13, 2016.

23. **Governing Law.** The laws of the State of California, without regard to any choice of law provisions, will govern this Agreement.
24. **Venue and Jurisdiction.** The City and County agree that the Services will take place in Los Angeles County. Any litigation arising out of this Agreement may only be brought in either the United States District Court, Central District of California, or the Superior Court of California, County of Los Angeles, West District, as appropriate. The parties agree that venue exists in either court, and each party expressly waives any right to transfer to another venue. The parties further agree that either court will have personal jurisdiction over the parties to this Agreement.
25. **Survival of Provisions and Obligations.** Any provision of this Agreement, which by its nature must be exercised after termination of this Agreement, will survive termination and remain effective for a reasonable time. Any obligation that accrued prior to termination of this Agreement will survive termination of this Agreement.

26. **Exhibits.** The following exhibits are incorporated by reference into this Agreement as though fully set forth herein.

Exhibit A	Scope of Services
Exhibit B	Budget
Exhibit C	Insurance Requirements

In witness whereof, the parties have caused this Agreement to be executed the day and year first above written.

ATTEST:

CITY OF SANTA MONICA,
a municipal corporation

Denise Anderson-Warren
DENISE ANDERSON-WARREN
City Clerk

By: *Rick Cole*
RICK COLE
City Manager

APPROVED AS TO FORM:

Marsha Jones Moutrie
MARSHA JONES MOUTRIE
City Attorney

ATTEST:

COUNTY OF LOS ANGELES

Lori Glasgow
LORI GLASGOW **DEPUTY**
Executive Officer
of the Board of Supervisors

By: *Hilda F. Solis*
Chair, Board of Supervisors

I hereby certify that pursuant to
Section 25103 of the Government Code
delivery of this document has been made.

APPROVED AS TO FORM:
MARY C. WICKHAM
County Counsel

Mary C. Wickham
Deputy County Counsel



LORI GLASGOW
Executive Officer
Clerk of the Board of Supervisors

By: *Lachelle Smithman*
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#23 SEP 13 2016

Lori Glasgow
LORI GLASGOW
EXECUTIVE OFFICER

78527

Exhibit A

Scope of Services

The County, through its Department of Consumer and Business Affairs (DCBA), shall provide wage enforcement services to the City. These services will include communication, outreach, enforcement, and other activities to assist the City in making Santa Monica workers aware of the Santa Monica Minimum Wage Ordinance ("Wage Ordinance") requirements, and to ensure employer compliance, protect worker rights, and provide wage claim intake and enforcement services.

The City will prepare and execute administrative hearings. The City will provide County staff training on the City ordinance, and will respond to questions as needed. The City will provide space on an as-needed basis for County staff enforcement activities including, but not limited to: prepare investigative reports, meet with workers and businesses, conduct office hours, and interview witnesses. The City will pay the County for outreach and enforcement services and printed materials based on the level of services provided according to an hourly fee and direct costs reimbursement, as set forth in Exhibit B.

The County will provide the following services:

1. Communication and Outreach

- a) Respond to telephone calls, emails, and written correspondence from Santa Monica workers with answers to general questions about the Wage Ordinance and enforcement process. Answer questions and provide clarification to workers in the languages as determined by DCBA.
- b) Advertise and promote County's enforcement services in printed material, postings, and at outreach events specific to Santa Monica and as applicable.
- c) Provide online assistance through a multilingual landing page on DCBA's website to answer questions and receive complaints from the public regarding the Wage Ordinance. This page will be linked to the City's minimum wage information website. It will also provide clearly marked information to distinguish any process or information that is specific to Santa Monica workers from that pertaining to the County.
- d) As requested by the City, and with prior review and approval by the City, prepare and provide informational materials to disseminate to the appropriate employee communities alerting them of the Wage Ordinance. This will include information educating workers on how to file a complaint.

Compile and submit quarterly enforcement statistics to the City. These will inform the City and public about the types of violations occurring within Santa Monica and the outcome of these violations, including the amounts of back wages collected and penalties assessed. The submission shall include, but is not limited to, the following information: the number of open cases, the businesses complained against, cases opened, the type of complaints, the number of cases closed and their disposition, average case closure time for cases not involving any administrative hearing or court process, average case closure time for all cases, number and type of correction orders issued, the number of administrative citations issued, collections rate on the citations, and the number of cases submitted to administrative hearing. DCBA staff will monitor cases, and report to the City on a quarterly basis. The monitoring report will include number of administrative hearing cases submitted to Superior Court pursuant to Government Code Section 53069.4 ("Superior Court Review") with the status and outcome of each such review; the number of cases pending writ or other civil judicial review; and the number of cases submitted to the Santa Monica City Attorney's Office ("City Attorney's Office") for criminal prosecution with the status and outcome of each such review. The County will provide the City with the number of proactive visits made to businesses, where applicable, on a quarterly basis. After the first year of this Agreement, the City and County determine together what additional information, if any is to be included in these statistical reports. In the case that any of the data in this section is not available at the time of a quarterly report, County will report the reason that information is not available, and will include the missing data in the next reporting period.

2. Enforcement

- a) **Initial Contact.** DCBA staff will answer questions from Santa Monica workers and employers. Counselors will provide information related to the complaint process and answer general questions, and will be available for any walk-in inquiries at any of DCBA's public counters, and at office or meeting spaces provided by and within the City on an as-needed basis. Counselors will also accept complaints over the phone.
- b) **Proactive Visits.** DCBA will conduct proactive visits to employers located in the City to ensure that the employer has the necessary information regarding the minimum wage rates, is aware of posting and payroll requirements, and is in compliance with the Wage Ordinance. These visits are designed to be informative rather than punitive. The number of compliance visits will be mutually determined by the City and County.

- c) **Complaint Intake.** The County will provide various means through which to accept complaints alleging Wage Ordinance violations, including in-person, telephone, online or email. This will include taking anonymous tips. DCBA staff will conduct an initial complaint review to determine jurisdiction, and will assign an investigator if the complaint falls within the City's jurisdiction.
- d) **Investigation.** The assigned investigator will evaluate the case according to the following procedures, which may be adjusted from time to time by agreement between the City and County, and will include conducting site visits, preparing investigative reports, and determining claim validity depending on the outcome of each investigation. County may refer cases to the City for criminal prosecution when warranted.

The County has the authority, as part of its investigation, to conduct employee and employer interviews; observations; an audit of relevant documentation such as payroll, time cards, and employer policies, as appropriate; and additional investigative work as necessary.

- e) **Enforcement Actions.** DCBA staff will pursue an administrative citation process for cases where a Municipal Code violation was substantiated based on the investigator's findings. DCBA may issue a correction order prior to the issuance of administrative citations for any violation of the Wage Ordinance pursuant to Santa Monica Municipal Code (SMMC) Section 4.62.100. Administrative citations will be issued according to the City's administrative citation process pursuant to SMMC Chapter 1.09. Citation fine amounts shall be based on the Wage Ordinance and associated schedule of fines adopted by resolution of the Santa Monica City Council. The County will respond to employer and employee inquiries related to the administrative citation process.
- f) **Settlement Negotiations.** DCBA staff will conduct settlement negotiations as appropriate. The City Attorney's Office will review all settlement terms for final approval.
- g) **Appeal and Hearing Process.** DCBA staff will work with the City Attorney's Office to prepare for and present the City's case in the appeal and hearing process pursuant to SMMC Chapter 1.09. The City will schedule the administrative hearings. DCBA staff will promptly prepare an investigative report, including all supporting documents (e.g., photographs, audio and video recordings, interview transcripts, etc.) necessary to support the underlying citation, and be prepared to testify at the live hearing. If the

employer further appeals the citation to Superior Court Review, DCBA staff shall be prepared to attend and testify at any subsequent court trial. City representatives will prepare and present the City's case. DCBA staff will prepare the administrative record, supply factual or investigative information, and perform supportive roles within their classification at any administrative hearings or subsequent legal action. The City Attorney's Office shall retain the right to elect to present any wage case in any administrative hearing or Superior Court Review hearing.

- h) **Writ Review.** If an administrative hearing decision is challenged by a writ of mandate or other civil legal action, the County staff shall work with the City Attorney's Office to defend the hearing decision. The County staff shall, under the direction of and in cooperation with the City Attorney's Office, prepare the administrative record, supply factual or investigative information, attend court proceedings as necessary, and perform any other supportive roles within the classification of the County staff performing the work necessary to perfect the defense of the decision.
- i) **Collection of Administrative Fines and Back Wages; Disbursement.** The County will work with employers to ensure all outstanding amounts are paid, assess any late fees as applicable, and take all necessary enforcement actions to promote compliance. The County will collect administrative fines on behalf of the City and will transfer this revenue to the City.
- j) **Referral of Cases for Criminal or Civil Prosecution.** If administrative citations do not bring about compliance or if other circumstances warrant (e.g., repeat offenses, egregious violations), DCBA staff shall prepare a detailed investigative report about the case, including all supporting documents (e.g., photographs, audio and video recordings, interview transcripts, etc.) necessary to support the prosecution, and forward such cases to the City Attorney's Office for prosecutorial review. If the case is filed by the City Attorney's Office, DCBA staff will conduct follow-up investigative work (e.g., interview additional witnesses, gather additional audio/video or other documentary evidence), prepare additional investigative reports, and testify at court hearings.
- k) **Probation Supervision.** DCBA staff shall be responsible for supervising and monitoring regulatory probationary terms ordered by a criminal court or stipulated judgment/settlement agreement authorized by a civil court, including but not limited to, back wage payments to individual employees,

fine payments, enforcement costs payments, licensing requirements, and any other regulatory probationary requirements. If DCBA staff finds that a defendant is in violation of probation, DCBA staff shall promptly inform the City Attorney's Office, prepare an investigative report detailing the violations, testify at probation revocation hearings or contempt hearings, and provide support to perfect the probation revocation or contempt process.

Exhibit B Budget

The County will provide enforcement services based on an hourly personnel rate. The total amount will be based on the services set forth in Exhibit A, including but not limited to education and outreach, advertising, counseling, investigation, compliance, testimony at hearings, training, and consulting, provided by the County.

Hourly Rate

\$90.00 per hour

Direct Costs

In addition to the hourly rate, the City will reimburse County for printing costs of any informational materials prepared in connection with communication and outreach services provided by the County. County will provide the City with a list of itemized costs and copies of receipts. Any such costs will be passed through to the City with no added mark-up.

The total compensation will not exceed \$125,000 for year one, with a total not-to-exceed amount of \$625,000 over the contract term.

Exhibit C
Insurance Requirements and Verifications
Professional Services Agreement Insurance Requirements –
No Professional Liability

County shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the County, its agents, representatives, employees or subcontractors.

Minimum Scope/Limits of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury, with limits of no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form CA 00 01 covering Code 1 (any auto), or if the Consultant has no owned autos, Code 8 (hired) and Code 9 (non-owned), with limits of no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers’ Compensation:** Workers’ Compensation insurance as required by the State of California, with Statutory Limits and Employers’ Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease (see footnote #1).

If the Consultant maintains higher limits than the minimums shown above, the City of Santa Monica requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Santa Monica.

Other Insurance Provisions

1. The policies are to contain, or be endorsed to contain, the following provisions:
 - a. **Additional Insured Status (CGL):** The City of Santa Monica, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided

in the form of an endorsement to the Consultant's insurance at least as broad as Insurance Services Office Form CG 20 10 11 85.

- b. **Primary Coverage (CGL and Auto):** For any claims related to this Agreement, the Consultant's insurance shall be primary as respects the City of Santa Monica, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Santa Monica, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- c. **Notice of Cancellation (all policies):** Each insurance policy required herein shall state that coverage shall not be cancelled except after notice has been given to the City of Santa Monica.
- d. **Waiver of Subrogation (all policies):** Consultant hereby grants to the City of Santa Monica a waiver of any right of subrogation which any insurer of said Consultant may acquire against the City of Santa Monica by virtue of payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Santa Monica has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Santa Monica. The City of Santa Monica may require the Consultant to purchase coverage with a lower deductible or retention or provide satisfactory proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City of Santa Monica.

Verification of Coverage

Consultant shall furnish the City of Santa Monica with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the City of Santa Monica before work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Santa Monica reserves the right to require complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

Failure to Maintain Insurance Coverage

If Consultant, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The City of Santa Monica, at its sole option, may terminate this Agreement and obtain damages from the Consultant resulting from said breach. Alternatively, the City of Santa Monica may purchase such coverage (but has no special obligation to do so), and without further notice to the Consultant, the City may deduct from sums due to the Consultant any premium costs advanced by the City for such insurance.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein. All exceptions must be approved in writing by the Risk Manager.

Footnotes

- # 1: Workers' Compensation insurance coverage is not required if the Consultant does not have employees. The Consultant must, however, execute the City's Workers' Compensation Coverage Exemption Declaration Form.